

**FLATHEAD COUNTY BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
JANUARY 3, 2012**

**CALL TO ORDER** A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Gina Klempel, Scott Hollinger, Mark Hash, Gary Krueger and Terry Kramer. Alex Hogle, and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 6 people in the audience.

**APPROVAL OF MINUTES** Klempel motioned and Kramer seconded to approve the December 6, 2011 minutes as submitted. The motion passed unanimously.

**PUBLIC COMMENT**  
*(not related to agenda items)*

None.

**RICK & PAMELLA TEETS (FCU-11-08)** A request by Rick & Pamella Teets, for a Conditional Use Permit that would allow an automotive repair shop within an outbuilding as a 'home occupation' pursuant to Section 5.06.020(2)(B) of the Flathead County Zoning Regulations. Situated within the Evergreen 'R-1 Suburban Residential' Zoning District, the 3.25 acre subject property is located at 120 N Springwood Road.

**STAFF REPORT** Alex Hogle reviewed Staff Report FCU 11-08 for the Board.

**BOARD QUESTIONS** Klempel asked about existing signage.

Hogle stated it was just the applicants' name and address.

**APPLICANT PRESENTATION** Eric Mulcahy of Sands Surveying Inc., 2 Village Loop, represented the applicants. He reiterated that the applicants had been at this location and operating the business since 1992. He stated they have been responsible neighbors having built a fence for shielding from their closest neighbor, and also grading the road in the summer and plowing the snow in the winter at no cost to any of the neighbors. He spoke of the zoning violation and how the applicants worked with the planning office to develop a plan for keeping the business. He then gave a brief rundown of how the business is operated; stating that volume is limited and heavy equipment is worked on off-site. The applicant has updated equipment and recycles products when possible. Waste oil is contained on-site and then transported to a facility that recycles it. He commented that the staff report was good and they understand and agree with the recommended conditions. He encouraged the board to approve the conditional use permit and went on to say the applicants would begin working on the Department of Environmental Quality (DEQ) certificate to get a re-write

if the conditional use permit is approved.

**BOARD  
QUESTIONS**

None.

**AGENCY  
COMMENTS**

None.

**PUBLIC  
COMMENT**

Cindy Landon, 111 N. Springwood Rd., has been a neighbor since 1993. She reiterated that the applicants do everything the best they can. Everything is neat and tidy; they don't make a lot of noise or work late into the night. They are very considerate of all their neighbors. She spoke about the homeowners association paying for the road maintenance years ago but they haven't paid for any of the upkeep for years. The applicant continues to grade and plow the road without compensation. She urged the board to not take away his livelihood.

**APPLICANT  
REBUTTAL**

None.

**STAFF  
REBUTTAL**

None.

**BOARD  
DISCUSSION**

Krueger stated that it's tougher than it looked. It is a residential zone and in essence the board could re-zone the one lot by approving the condition use permit.

Hash said he understood the nature of the problem but the board had to be a safety valve when it came to zoning related issues. He said the only way to approve this request was to make sure each one of the standards for a home occupation was met. He had an issue with letter F, under 'Home Occupation' Performance Standards in the staff report regarding byproduct disposal. He asked Mulcahy how the board could make the facts that existed today fit the specific requirement.

Mulcahy spoke about previously approved conditional use permits for home occupations within the county and said any manufacturing business is going to have byproducts. He didn't believe the intent of the regulations was to limit any business that created a byproduct. He felt the intent was that there should be a proven way to safely address the byproducts that are created. In this particular situation the applicants have worked hard to create a facility where they can address the liquids that are a byproduct of repairing automobiles. The applicant does a good job of keeping the facility clean and dealing with those byproducts. He felt the home occupation and the conditional use permit was a site specific, case-by-case matter and the applicants have demonstrated they can address the issue of byproduct disposal.

Krueger asked if the waste oil was being used for heating and the other is being recycled.

Mulcahy said you could only burn so much waste oil and there was a surplus that was collected and taken to an oil recycler. The applicant has always tried to responsibly address the condition.

Kramer said he felt that the only criteria it didn't meet was the volume.

Klempel commented that the oils and fuels are collected in the shop and there are no environmental constraints.

Krueger read the definition of a home occupation and asked if once the occupation moves outside the home does the board use the same criteria or different criteria and why.

Hollinger said the second part of that definition says accessory uses for a home occupation, there is no limitation for that. There are limits if it is within the home.

Krueger commented that the answer would be if any home occupation gets too big within the county a person would just have to build an outbuilding.

Hollinger gave examples of permitted and conditional uses within an R-1 zone and the waste accumulation from some of those. He commented that the idea of this generation of hazardous material is really a red herring. He understood the concern but didn't feel that it was only a home occupation that could be reckless when it came to the disposal of hazardous material; a person was going to do that if they were so inclined whether it was a business or personal use. He felt there was no home occupation out there that exists that would not create a byproduct or waste.

Krueger commented that in his opinion the applicants had shown they run a good operation. Part of the conditional use process states that the neighbors living immediately adjacent to the subject parcel would have to submit written complaints and they have not. There really is no reason not to grant the conditional use permit that he could see other than the board would be changing the zone from R-1 to a business zone for that particular lot in that particular subdivision forever; conditional use permits run with the land forever. If a new owner of the land sometime in the future wanted to open up an operation that was an auto shop, he would want to condition this so that it doesn't affect the neighbors whether it stays with the current owner or is sold in the future. The board has to be concerned because this is in a residential neighborhood.

Hash stated that the nature of a home occupation was that it was inside the home and nobody was going to hear it. That's how it was explained to the

board a long time ago when home occupations were first developed. When he looked at these things he looked at how it would affect the neighbors. This applicant made it easy for the board because he was a good neighbor. This board has the ability, at their discretion, to do what's right when things that don't quite fit or doesn't work in a particular area. He agreed with Kruegers' concerns about what could happen in the future. The only thing he could think to do to make this work was to make sure the conditional use permit was tied directly to this application. Condition #1 stated just that. He felt comfortable allowing this to happen but he wanted to make it specific to this site and not allow it to branch into something further. If he had his preference he would like this permit to be good for only as long as this particular applicant had it. But the conditional use permit runs with the property so the board is not able to do that.

Krueger asked if a condition could be put on there that if the business does not operate for 365 days, the conditional use permit would then terminate.

Grieve said he would look into that as the board continued discussion. The permit would not be affected by a change in ownership but the new owner would be held to condition #1 that clearly states it would have to be operated the way it says in the application.

Kramer said if the board is concerned about expansion of the business should it be sold, they could condition it even further to protect it and keep it small.

Krueger said this was developed to be a residential subdivision and those lots are different than lots that are not created by subdivision. Those lots went through the county process to make them residential and if the board is going to turn some of them into business lots that should happen in the zoning process.

Hollinger commented that they are already business lots and proceeded to reiterate the permitted uses within the R-1 zone.

Krueger stated that it doesn't specifically say auto repair shops it says home occupation.

Hash said a lot of subdivisions regulate themselves through covenants. He asked the applicant if putting a limitation on the permit was acceptable to him.

Teets said he was fine with that.

Hash then stated that if the applicant agreed to it, he thought the board could add that to a condition, to put that limitation on the permit.

Mulcahy stated that condition #10 relates to this issue that if the applicant doesn't comply with all the conditions within a year the conditional use permit

is void. He agreed that the board could put a condition on the permit that if the business ceases to operate, sometime in the future, for a year it wouldn't be that far out of line with condition #10. He also stated that there are provisions in the zoning regulations regarding a non-conforming use in a zoned area, that if the use ceases and becomes conforming, you can't go back.

Grieve agreed with one of the two points Mulcahy made. He agreed that if the use, and that is what is being considered tonight, ceases for a certain amount of time then yes, it would no longer be used in conformance with the plans submitted. Therefore, terminating it may be a condition worthy of the board's consideration. The second point regarding non-conforming uses, he was reluctant to equate this to a non-conforming use because the non-conforming provision specifically starts off by defining something that existed prior to the adoption of the zoning. He didn't want to mix those two terms, legal non-conforming and permitted uses; this one would fall under permitted use. It would broaden the performance by getting a conditional use permit. It has already been established that this business did not exist prior to the zoning. He would refrain from invoking the provisions of the non-conforming use and stick to the provisions of a conditional use permit. As long as the board is not tying it to the ownership but just the use, it is legitimate to put some sidebars on the permit.

The board and the applicant discussed what a reasonable timeframe would be if the use should cease operating.

Hogle wanted to bring to the board's attention that condition #9 specifically speaks to a home occupation requirement under Section 5.06 of the zoning regulations. That's also kind of safeguarding the requirement for compliance with the application and the review and approval by the board of adjustment. It's a notarized certification that's supposed to be adhered to saying that they meet the standards of home occupation.

Klempel asked if this were the only home occupation in that area.

Hogle said it was hard to tell as staff doesn't typically monitor that and home occupation is a permitted use in the R-1 district. In the event that's it's in an outbuilding or that it has extra employees besides the family it requires a conditional use permit. He said he wasn't aware of any other auto repair shops in the area.

Hash stated one of the conditions that talks about substantial conformance he was going to try to tie it to be site specific. He was looking at such things as the volume of the work would increase the number of employees, signage and noise.

**MOTION TO  
ADOPT F.O.F.,  
MODIFY LETTER  
'F' OF SECTION  
E  
(FCU-11-08)**

Hash made a motion seconded by Kramer to adopt staff report FCU 11-08 as findings-of-fact with a modification to letter 'F' of Section E 'Home Occupation' Performance Standards of the staff report to state that the applicant has mitigated the volume criteria by his recycling and the use of material on site.

**BOARD  
DISCUSSION**

None

**ROLL CALL TO  
ADOPT F.O.F.,  
MODIFY LETTER  
'F' OF SECTION  
E  
(FCU-11-08)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Hollinger stated that he had thought about what would happen if there was a succession in the family.

Teets said they have one son who is a mechanic as well and although he doesn't work with his father now, what would happen if he might need a little extra help would that be possible, for the son to work there.

Hollinger stated they would have to come back through the process.

Kramer said as long as only one of them works in the shop, the permit would state one employee. It wouldn't matter which one of them it is.

Grieve said it isn't an issue because under the provision by which the board is currently reviewing this, the criteria states that "more than one person other than members of a family residing on the premises shall be engaged in such occupation on the property at any given time." It's a family member, it's a succession, and nobody would bother them. But if for some reason we get a complaint, the fact of the matter is they are being reviewed for a conditional use permit and one of the criteria is more than one employee other than a member of the family who lives at the residence. If the board wanted to address this now they could because the applicants are going through a full conditional use permit review and it was brought forth during this review that a family member may be working at the business sometime in the future.

**MOTION TO  
APPROVE WITH  
AMENDMENTS  
TO CONDITIONS  
#1 AND #10**

Hash made a motion seconded by Kramer to approve the conditional use permit with an amendment to condition #1 that will now read: Operation of the home occupation ('automobile repair shop') on the subject property shall be in substantial conformance *(such as but not limited to volume of work, no increase in the number of employees other than members of the family, signage, off*

*premise noise*) with the application materials and site plan as submitted and approved by the Board of Adjustment and modified by the conditions below [FCZR Section 2.06.010].

and adding a sentence to condition #10: *The permit ceases if the use as applied for does not continue for 365 continuous days.*

**ROLL CALL TO  
APPROVE WITH  
AMENDMENTS  
TO CONDITIONS  
#1 AND #10**

On a roll call vote the motion passed unanimously.

**DUGAN /  
STOKKE /  
ANGELL  
(FZV 11-02)**

A joint request by Sarah Dugan, Jolene Dugan, Paloma Dugan, Lesley Stokke and Bianca Angell for zoning variances on each of five adjoining properties within the Holt Zoning District. The properties are zoned SAG-10 (Suburban Agricultural). The applicants are requesting variances to lot width on each of five adjoining lots, pursuant to Section 3.07.040(2) of the Flathead County Zoning Regulations. The properties are located at 494, 482, 440, 414 and 386 Holt Drive.

**The applicant withdrew this application 12/29/2011**

**OLD BUSINESS**

None.

**NEW BUSINESS**

Grieve read a section of the bylaws regarding election of new officers.

Krueger made a motion seconded by Klempel to nominate Hollinger for Chair in the upcoming year.

The motion passed unanimously.

Klempel made a motion seconded by Kramer to nominate Krueger for Vice-Chair in the upcoming year.

The motion passed unanimously.

Grieve informed the board of the schedule of upcoming agenda items for the next couple of months. He then commended the board for the discussion and guidance they provided regarding the subject of home occupations. He stated that the board is always helpful in establishing boundaries, parameters and sidebars for all of the daily work in the planning office. He said he appreciated the board members thinking, time and research that goes into each application. He also commented that Hogle did a good job with the staff report as it was a challenging thing to review and stay on task.

Hollinger brought up the fact the board members didn't receive hard copies of

the staff reports for this meeting and wondered if they were going to receive those in the future.

Grieve stated that yes they would receive hard copies of any information they felt they needed as he wanted them to be comfortable with the materials they receive and appreciate the fact they are working with the office regarding cost cutting in regards to sending reams and reams of paper.

Hash asked if all of the information were available to them at the meeting.

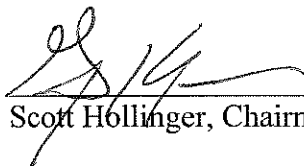
Grieve said yes, the entire file is available at the meeting and any member of the public is welcome to come to the office and take a look at any of the files as they are all public information.


Klempel read under R-1 permitted uses people can have livestock. She commented that maybe it should say Suburban Residential/Agricultural.

Krueger said that under state law it says the board of adjustment should not change the underlying zone. The underlying zone is R-1 here and he said he wished this would have happened without an application because then they could have had discussion about what they were doing. He thought they handled it well because they tied it to that specific use and a specific person. It could very well end up going back to an R-1 use if this person closed his business. He stated he was happy with where they went with this particular application.

Kramer and Hollinger indicated they would not be able to attend the next meeting on February 7, 2012.

**ADJOURNMENT** The meeting was adjourned at approximately 7:15 p.m. on a motion by Klempel. The next meeting will be held at 6:00 p.m. on February 7, 2012.

  
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Scott Hollinger, Chairman

  
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Mary Fisher, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 2 / 2 /12